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Following are statements by President Reagan on July 9, 1982, and by Ambassador James L. Malone, Special Representative of the President for the Third U.N. Conference on Law of the Sea, before the House Foreign Affairs Committee on August 12, 1982.

PRESIDENT'S STATEMENT, JULY 9, 1982

The United States has long recognized how critical the world's oceans are to mankind and how important international agreements are to the use of those oceans. For over a decade, the United States has been working with more than 150 countries at the Third U.N. Conference on the Law of the Sea to develop a comprehensive treaty.

On January 29, 1982, I reaffirmed the U.S. commitment to the multilateral process for reaching such a treaty and announced that we would return to the negotiations to seek to correct unacceptable elements in the deep seabed mining part of the draft convention. I also announced that my Administration would support ratification of a convention meeting six basic objectives.

On April 30, the conference adopted a convention that does not satisfy the objectives sought by the United States. It was adopted by a vote of 130 in favor, with four against (including the United States), and 17 abstentions. Those voting "no" or abstaining appear small in number but represent countries which produce more than 60% of the world's gross national product and provide more than 60% of the contributions to the United Nations.

We have now completed a review of that convention and recognize that it contains many positive and very significant accomplishments. Those extensive parts dealing with navigation and overflight and most other provisions of the convention are consistent with U.S interests and, in our view, serve well the interests of all nations. That is an important achievement and signifies the benefits of working together and effectively balancing numerous interests. The United States also appreciates the efforts of the many countries that have worked with us toward an acceptable agreement, including efforts by friends and allies at the session that concluded on April 30.

Our review recognizes, however, that the deep seabed mining part of the convention does not meet U.S. objectives. For this reason, I am announcing today that the United States will not sign the convention as adopted by the conference, and our participation in the remaining conference process will be at the technical level and will involve only those provisions that serve U.S. interests.

These decisions reflect the deep conviction that the United States cannot support a deep seabed mining regime with such major problems. In our view, those problems include:

- Provisions that would actually deter future development of deep seabed mineral resources, when such develop-

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ment should serve the interest of all countries;

- A decisionmaking process that would not give the United States or others a role that fairly reflects and protects their interests;
- Provisions that would allow amendments to enter into force for the United States without its approval; this is clearly incompatible with the U.S. approach to such treaties;
- Stipulations relating to mandatory transfer of private technology and the possibility of national liberation movements sharing in benefits; and
- The absence of assured access for future qualified deep seabed miners to promote the development of these resources.

We recognize that world demand and markets currently do not justify commercial development of deep seabed mineral resources, and it is not clear when such development will be justified. When such factors become favorable, however, the deep seabed represents a potentially important source of strategic and other minerals. The aim of the United States in this regard has been to establish with other nations an order that would allow exploration and development under reasonable terms and conditions.

AMBASSADOR MALONE, AUGUST 12, 1982

Today, I'd like to review the results of the 11th session of the Law of the Sea Conference. You asked that I briefly summarize our efforts to achieve the President's objectives at that session and also indicated an interest in the future oceans policy alternatives available to the United States.

As you are aware, the President announced his decision to not sign the Law of the Sea treaty on July 9. With your permission, I would like the President's statement to be made a part of the record.

When the President indicated last January 29 that the United States would return to the Law of the Sea negotiations and work in good faith with other countries to achieve an acceptable treaty, we hoped that the final draft convention would be one that the United States could sign. At that point, the President emphasized that the United States remained strongly committed to the multilateral process for reaching agreement.

It was in this spirit that the United States went to the 11th session of the Law of the Sea Conference. The U.S. delegation repeatedly demonstrated its flexibility in a wide variety of ways and exerted every effort to find compromise solutions. Proposals were adjusted in timing and format to meet the concerns of the Group of 77. Midway through the conference, in fact, we sought and were authorized to change our instructions in order to break the negotiating deadlock.

Despite these efforts, and the efforts of a number of other countries trying to encourage negotiations, I must report that no meaningful negotiations took place on our proposed changes to Part XI. The attitude of many was actively resistant to change that might have made it possible to alleviate our concerns. As a result, we are left with a Law of the Sea treaty which, as President Reagan recently stated, fails to meet U.S. objectives.

There are, of course, positive elements in the treaty. These elements demonstrate what can be accomplished through multilateral diplomacy when a serious effort to find solutions and to reach compromises is made.

I emphasize strongly that the United States went to the conference fully prepared to work—and negotiate—to find mutually acceptable solutions that would have satisfied our objectives and that provided a fair and balanced system for promoting the development of deep seabed resources as a benefit to all nations.

I can't say what the result might have been had such negotiations taken place. It is certainly possible that the final outcome would have been the same. However, I believe it possible that the majority of delegations would have recognized that the United States and the cosponsors of its final amendments were not seeking to change the basic structure of the draft treaty. We did not try to destroy the system. Instead, we sought to make it work to the benefit of all nations to enhance, not resist, seabed resource development.

On April 30, the conference adopted the treaty text by a vote of 130 in favor, 4 against, with 17 abstentions. The three states other than the United States that voted against the treaty's adoption were Israel, Turkey, and Venezuela and the 17 states abstaining included the United Kingdom, Federal Republic of Germany, Belgium, Netherlands, Luxembourg, Italy, Spain, Thailand, and the Soviet bloc, except for Romania. While the reasons which prompted these countries to abstain or to vote against the treaty were varied, and not necessarily the same as ours, the number and economic importance of countries expressing displeasure with the treaty text was of great significance.

As President Reagan noted, those countries produce more than 60% of the world's gross national product. They also provide more than 60% of the contributions to the United Nations. Included in these countries are most of those who have, or are likely to develop, seabed mining technology. I would, therefore, have to say that the negotiations on the seabed mining provisions represent a major failure of international diplomacy, in that important concerns of those countries most closely related to seabed mining were not taken into account.

The decision to call for a vote and to cast our vote against the treaty was not taken lightly. The United States has been centrally involved in the conference process at every stage since its inception. We did not easily dismiss the personal commitment and great dedication of hundreds of delegates who worked years for this agreement—even when many of them, in the end, opposed the U.S. proposals.

In addition to the support of our allies, I would like to take special note of the effort of the so-called Group of 11 (Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden, and Switzerland). These countries prepared their own amendments, which they hoped would serve as a basis for negotiations between the United States and the Group of 77. The Group of 11 proposals provided a useful basis for addressing some U.S. concerns. Other elements, however, fell considerably short of the U.S. objectives. Most importantly, many U.S. concerns were not addressed at all by the Group of 11 proposals. When the Group of 77 insisted that the United States and its allies accept the Group of 11 proposals as an exhaustive negotiating agenda, we were unable to accede.

Next, I would like to make the following general assessment regarding the text of the Law of the Sea convention as it was finally adopted on April 30. We were successful in working with others to insure that no adverse changes were made to navigation and overflight provisions. Portions of the treaty dealing with these issues, and many other nonseabed provisions, while not optimal, remain consistent with U.S. interests.

The deep seabed mining provisions, on the other hand, do not even minimally meet U.S. objectives. I would like to recall at this point that the President set

out six objectives in his statement of January 29, 1982. I must report that none of these objectives was achieved. As a result, the Law of the Sea treaty is seriously flawed.

The regime created by the treaty would seriously discourage private investment in deep seabed mineral production. A fundamental lack of certainty would exist with regard to the granting of mining contracts and mandatory technology transfer requirements. These provisions violate a basic principle that owners of technology have rights in its sale and use. Beyond even that, the treaty would impose burdensome financial requirements on the mining operations. The rules and regulations to be developed in the Preparatory Commission cannot cure these defects.

For the United States, the Resolution on Preparatory Investment Protection might have been acceptable had negotiations on seabed mining portions of the treaty led to improvement of its defects. But the resolution fails to correct these defects of the treaty and creates additional problems of its own. The resolution would require a pioneer investor, such as one of our existing U.S. mining companies, to assume heavy financial obligations in addition to those contained in the convention. It also allows the U.S.S.R., Japan, and other countries to achieve pioneer investor status, even though their seabed mining activities have been extremely limited to date.

The financial obligations of the Resolution on Preparatory Investment Protection would include payment of $250,000 upon registration with the Preparatory Commission, the accrual of a $1 million annual fee payable upon approval of a plan of work when the convention enters into force, payment of $250,000 for processing a plan of work, and expenditures to meet diligence requirements to be established by the Preparatory Commission.

Additional obligations for a pioneer investor include exploration of the reserved area—on a reimbursable basis—at the request of the Preparatory Commission, training of personnel designated by the Preparatory Commission, and the transfer of technology prior to entry into force of the treaty.

Beyond the practical problems which it creates for seabed mining, the convention presents other serious difficulties. The decisionmaking system of the International Seabed Authority would be structured so that the United States and other potential deep seabed mineral producers and consumers would be given inadequate protection against adverse policy and operational decisions.

The treaty provides for a review conference which, after 5 years of negotiations, may adopt amendments to the deep seabed mining regime that could automatically enter into force for the United States upon approval by three-fourths of the states parties and thus effectively bypass U.S. approval, including congressional advice and consent. Our only recourse would be denunciation of the convention—an unacceptable choice.

The convention would allow funding for national liberation groups, such as the Palestine Liberation Organization and the South West Africa People's Organization.

The convention would artificially limit deep seabed mineral production and would permit discretionary and discriminatory decisions by the Authority if there is competition for limited production allocations.

The treaty would, in effect, create far too many privileges for the Enterprise, the seabed mining arm of the International Seabed Authority—advantages which would make it extremely difficult, and perhaps impossible, for private ventures to compete, at least without national subsidies. A monopoly over deep seabed mineral production could thus result. In effect, this could destroy the parallel system which, as you may recall, was the central compromise worked out several years ago. These provisions would tend to discourage or prevent any other kind of deep seabed mining under the treaty.

I believe it accurate to say that there is a clear preponderance of feeling among those involved in deep seabed consortia companies that they could not and would not carry out commercial mining under the treaty. Naturally, this is a great disappointment to all those who have worked for years to create conditions that encouraged the development of a new industry able to benefit the nations of the world.

It was for these reasons that the United States could not agree to the adoption of the final text by consensus. Instead, it asked for a vote; then, on April 30, voted against the treaty's adoption.

I have provided to the committee copies of the unclassified U.S. delegation report which describes the conference session, our negotiating efforts, and our assessments of the text in greater detail.

Some have suggested that we should have agreed to the treaty because it is our only means of assured access to seabed minerals. As I have noted earlier, this treaty does not, in fact, provide assured access. The procedures for granting contracts are not automatic. There is no way that a company or nation can be certain that it will secure mining authorization by the International Seabed Authority. In reality, it is highly unlikely that there will by any investment in seabed mining under the treaty, unless governments are willing to subsidize their companies or mining entities.

It has been suggested that we have sacrificed commercial interests in the deep seabed for some goal of ideological purity. This factually misrepresents the aims of this Administration. We have dealt largely with concrete issues. The treaty creates real practical problems for deep seabed mining, which have nothing to do with ideology. There are important matters of principle involved, but these are important not only to us but to other nations as well. One cannot dismiss these widespread concerns as insignificant. They were of overriding importance to many members of the Group of 77, who saw these issues as directly relevant to other North-South negotiations and their underlying goal of a new international economic order.

The mandatory technology transfer issue is a case in point. The implications of agreement in the Law of the Sea context go far beyond these negotiations. Other delegations recognized that fact from the beginning. It would have been foolish or naive to have pretended that this wasn't true.

Clearly, the United States could not go along with a treaty that failed to support so many important U.S. oceans interests. Further, I don't believe that the treaty adopted on April 30 had any chance of approval by the Congress. In my considered opinion, to have voted for the treaty would have been a breach of faith with our allies and friends but mostly with the American people, whose future is irrevocably linked to the elements of any treaty on the use of the sea.

Looking ahead, three stages of the conference remain. First, the drafting committee has been meeting in Geneva this month and last to complete review of the text. Second, an informal plenary will meet in New York on September 22–24 to adopt final drafting committee changes. Third, the final act will be opened for signature and interpretive

statements in Caracas in early December. The United States will participate in the remaining conference process at a technical level and will be concerned with those provisions that serve U.S. interests.

This Administration will continue developing national oceans policy, examining the actions which the United States needs to take to protect and enhance its oceans interests outside the Law of the Sea Convention. It is too early now to state what these actions might be. We do believe that we must be prepared not only to meet any challenges to traditional maritime activities but to take new initiatives to assure the orderly development of oceans resources in response to market forces. We will continue to consult with other countries who have common oceans interests, as bilateral and multilateral cooperation will be an essential element of the new policy.

We will also continue to work closely with this committee and with other committees in Congress concerned with the Law of the Sea and with related oceans policy. ■

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